

HONORABLE WALTER SHAPERO

Joint Final Pretrial Orders and Preparation of Exhibits in Adversary Proceedings and Contested Matters

- (a) **Duty to Prepare Joint Final Pretrial Order.** Counsel for Plaintiff(s) (or a Plaintiff without counsel), in an adversary proceeding shall convene a conference for all parties to confer and collaborate in formulating a concise joint final pretrial order. Counsel for Plaintiff(s) (or a Plaintiff without counsel) shall compile the order. Counsel for all parties and any party without counsel shall approve and sign the order. Counsel for Plaintiff(s) or a plaintiff without counsel shall submit an original and one copy of the order to the judge for approval and adoption. The order shall provide for the judge's signature and, when signed and filed, becomes an order of the Court, superseding the pleadings and governing the course of trial unless modified by further order. The pretrial order shall not be a vehicle for adding claims or defenses. The orders will not be docketed until the judge has signed it. If the Court specifically orders the parties to prepare a joint final pretrial order in a contested matter they shall do so in accordance with the foregoing, and, the movant shall be considered the plaintiff for purposes of these requirements and the Court will designate the other parties responsible to participate.
- (b) **Contents of Order.** The joint final pretrial order shall contain, the following, in the indicated numbered and captioned headings:
 - (1) **Jurisdiction.** The parties shall state the basis for Bankruptcy Court jurisdiction and whether the matter is core or non-core related , and whether jurisdiction is contested by any party.
 - (2) **Plaintiff's Claims.** The statement of the claim or claims of plaintiff, which shall include legal theories.
 - (3) **Defendant's Claims.** The statement of the claim or claims of defendants, or third parties, which shall include legal theories
 - (4) **Stipulation of Facts.** The parties shall state, in separately numbered paragraphs, all uncontested facts.
 - (5) **Issues of Fact to be Litigated.**
 - (6) **Issues of Law to be Litigated.**
 - (7) **Evidence Problems Likely to Arise at Trial.** Each party shall state its objections to exhibits and to the use of deposition testimony.
 - (8) **Witnesses.** Each party shall separately list all witnesses whom that party will call and all witnesses whom that party may call. A party may, without further notice, call a witness listed by another party as a "will call" witness. The list shall state whether the witness is an expert and whether testimony will be offered by deposition. Only listed witnesses will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be reasonably anticipated before trial, or except for good cause shown.

- (9) **Exhibits.** The parties shall number and list, with appropriate identification, each exhibit. Objections to listed exhibits must be stated in the joint pretrial order. Only listed exhibits will be considered for admission at trial, except for rebuttal exhibits which could not be reasonably anticipated before trial, or except for good cause shown.
 - (10) **Damages.** The parties shall itemize all claims damages and shall specify damages that can be calculated from objective data. The parties shall stipulate to those damages not in dispute.
 - (11) **Trial.**
 - (A) Jury or non-jury.
 - (B) Estimated length of trial.
 - (12) **Settlement or mediation or Arbitration.** Counsel or a party without counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and state the current status of negotiations and any plans for further discussions. They may request the Court to schedule a settlement conference or discuss mediation or arbitration.
 - (13) **Filing of Trial Briefs, Findings and Instructions.** Trial briefs, proposed findings of fact and conclusions of law in non-jury cases or requests for instructions in jury cases will normally be required to be filed after the trial pursuant to a schedule determined by the court.
 - (14) **Additional Requirements.** A judge, in an appropriate case, may add requirements to the joint final pretrial order, or may eliminate the requirements in whole or in part.
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- (c) **Failure to Cooperate.** For failure to comply with these requirements or with the terms of the joint final pretrial order, the Court may dismiss claims, enter a default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions.
 - (d) **Pre-marking and Exchange of Documentary Exhibits.** If there has been no final pretrial conference and at least one week's notice of the trial or the evidentiary hearing has been provided to counsel, then at least on day prior to the trial or evidentiary hearing, counsel shall arrange with the court recorder to have all documentary exhibits marked and shall provide copies of all exhibits to opposing counsel. An exhibit list shall be provided to the Court at the start of the trial or hearing. At the hearing, an extra copy of each documentary exhibit shall be available for witnesses' use during testimony. Unless the Court order otherwise, each attorney shall be responsible for the care and custody of the attorney's own exhibits.
 - (e) **Exhibit Identification.** Exhibits shall be marked using numbers for the plaintiff or movant, and letters for the defendant or respondent. Each separate document shall be separately marked.